IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 260 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALBHAI RAIJIBHAI RAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 260 of 2003

MR MITESH R AMIN for Petitioner No. 1-3

MS. NANDINI JOSHI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/03/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the petitioners. Learned APP Ms. Nandini Joshi has taken me through the facts which were before the learned Sessions

Judge when the charge against the present petitioners came to be framed and has attempted to point out that certain overdoings were found on the part of the Police Officers who have been charge sheeted initially by the investigating agency for the offence punishable under Sections 304, 224 and 225 of IPC. Act of taking the deceased in an auto rickshaw, an accused of serious offences including 302 IPC and a PASA detenue to his native town or area, is a conduct goes against accused.

2. It is submitted by Mr. Amin that on day of framing of the charge, the learned presiding Judge namely, the learned Sessions Judge has taken cognizance of the offence punishable under Section 302 without giving opportunity to resist and framed the charge accordingly. This, by itself, is an order, under challenge, before the Court in the present revision application.

3. Having considered the facts and circumstances brought to the notice of the Court and the Scheme of Section 46(3) of Cr.P.C. and in the background of the provisions of Section 76 and 79 of IPC, Court is of the view that the charge of Section 302 is not sustainable and therefore, the same is required to be quashed. Investigating agency has rightly not chargesheeted the petitioners for 302 IPC and they are not even committed for said offence. It is relevant to note that the Court has not framed any formal charge of the offence punishable under Section 304. So, it would be appropriate to quash the charge framed against the present petitioners and direct the learned Sessions Judge to offer an opportunity to all the accused persons and then, after hearing them, charge be framed. However, it is clarified that while framing the charge, the learned Sessions Judge shall take observations of this Court made in the present order.

4. It is observed that the petitioners are granted bail as per the orders passed by this Court, they shall remain on bail till the date of charge for the offences mentioned in the police charge sheet. So, they shall remain on bail pending trial. However, if the Court decides to take the accused in custody by framing any graver charge, then the said order to take them in judicial custody, should not be implemented for 15 days.

5. It will be open for them to pray for discharge from the offence punishable under Section 304 IPC. I am passing this order because the petitioners have been granted bail on merit for the offence punishable under

Sections 304, 224 and 225 of IPC. Rule is made absolute in above terms.

(C.K.Buch,J)

Jayanti*